IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11128 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VAHIDALI @ VAHID

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11128 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MS NANDINI JOSHI AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 17/04/2003

ORAL JUDGEMENT

1. Heard the learned counsel for the petitioner Mr H.R.Prajapati for the petitioner and learned AGP Ms

Nandini Joshi for the State. The affidavit tendered by her of Mr K.R.Kaushik, Commissioner of Police of Ahmedabad, is taken on record.

2 By this petition under Article 226 of the Constitution of India, the petitioner - detenu has challenged the legality and validity of the order of detention dated 7.9.2002 passed against him by the Commissioner of Police, City of Ahmedabad, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu.

3. The detenu has been served with the grounds for detention along with the order of detention on 7th September 2002, which indicate that the petitioner is a bootlegger. The detaining authority, that is, Police Commissioner, City of Ahmedabad, while recording the subejctive satisfaction for passing the order of detention, has considered registration of four different criminal offences registered with Shahibaug Police Station of City of AHmedabad and Prohibition Police Station (Eastern Division and Southern Division) of City of Ahmedabad. The table of cases registered against the detenu under the Bombay Prohibition Act shows that the petitioner was allegedly involved in four offences registered between 27.6.2002 to 29.7.2002. So, within one month he was found involved in dealing with prohibited liquor of a great value. The police has also recovered three motor cars, a motor bike, mobile telphones. Undisputedly, the offence registered are grave in nature and it is submitted by Mr Prajapati that over and above the present petitioner the authority has detained total eight persons as per the instructions received by him and three of them are still under detention. According to Mr Prajapati one Himmatsinh is the main accused. Even the case registered by the police are considered as it is, it appears that they have been released by this Court and the order of detention against four detenus have been quashed by this Court on merits. It is submitted that one detenu - Faiyaz Mohammad had preferred writ petition being Special Civil Application No.11125 of 2002 and the same has been allowed vide order dated 28th March 2003. On the same day the other detenu Akbarali has also been set at liberty and the detention order is quashed. Other two petitions being Special Civil Application Nos.7423 of 2002 and 7680 of 2002 preferred by Ravindra @ Ravi Puwa and Dharmendra @ Munna have been allowed by this Court and the order of

detention against these two persons have been quashed vide decision dated 4.3.2003. Itis argued on the ground of parity that the present petitioner is a similarly situated detenu and the order of detention is required to be quashed. It is argued that on the day of passing of the order of detention and execution, the petitioner was in judicial custody. The subjective satisfaction recorded by the authority that the petitioner would get favourable order of bail is totally hypothetical and on such hypothesis the subjective satisfaction cannot be recorded and therefore also the order of detention should be quashed.

It is submitted that all the four detenus who have been set at liberty by quashing the order of detention on this very ground that on the date of detention they were in custody and there was no need to pass any order of preventive detention.

4 It is also argued that this is a case of exercise of the power mechanically. It is pointed out that statements of two unnamed witnesses were recorded by the sponsoring machinery on 5th September 2002 and as per the endorsement made by the detaining authority these statements were verified on 6.09.2002. The order of detention was passed on 7th September 2002. This shows that the detaining authority has exercised its power under Section 9(2) of the Act mechanically in an arbitrary manner. This goes to the root of the validity of the order. In support of this submission Mr Prajapati has placed reliance on the the case of RANUBHAI BHIKHABHAI BHARWAD (VEKARIA) V. STATE OF GUJARAT & ORS. [2000 (3) GLR 2696]. The ratio laid down by this Court in the said decision in para 9 clearly applies to the facts of this case. So on this ground also the order of detention cannot sustain and the order of detention is not found sustainable.

5 I do not think it necessary to deal with the other contentions and grounds raised by the petitioner and the petition can be allowed.

6 For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 7.9.2002 passed by the Commissioner of Police, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C.K. BUCH, J]

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